

RULES OF TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY

CHAPTER 0720-11

CERTIFICATE OF NEED PROGRAM – GENERAL CRITERIA

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0720—11—.01 GENERAL CRITERIA FOR CERTIFICATE OF NEED. The Agency will consider the following general criteria in determining whether an application for a certificate of need should be granted:

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(3) Quality. Whether the proposal will provide health care that meets appropriate quality standards may be evaluated upon the following factors:

- a) Whether the applicant commits to actual project utilization being comparable to utilization projected in the CON application;
- b) Whether the applicant commits to maintaining an actual payor mix that is comparable to the payor mix projected in CON application particularly as it relates to Medicare, TennCare/Medicaid, Charity Care, and the Medically Indigent ;
- c) Whether the applicant commits to maintaining staffing comparable to the staffing chart presented in CON application;
- d) Whether the applicant will obtain and maintain all applicable state licenses in good standing;
- e) Whether the applicant will obtain and maintain TennCare and Medicare certification(s), if participation in such programs was indicated in the application;
- f) Whether an existing healthcare institution applying for a CON has maintained substantial compliance with applicable federal and state regulation for the three years prior to the CON application. In the event of non-compliance, the nature of non-compliance and corrective action shall be considered.
- g) Whether an existing health care institution applying for a CON has been decertified within the prior three years. This provision shall not apply if a new, unrelated owner applies for a CON related to a previously decertified facility.
- h) Whether the applicant will participate, within 2 years of implementation of the project, in self-assessment and external peer assessment processes used by health care organizations to accurately assess their level of performance in relation to established standards and to implement ways to continuously improve.
 - a. This may include accreditation by any organization approved by Center for Medicare and Medicaid Services (CMS) and other nationally recognized programs. The Joint Commission or its successor would be acceptable if applicable. Other acceptable organizations may include, but are not limited to, the following:
 - i. The same accrediting standards as the licensed hospital of which it will be a department, for a Freestanding Emergency Department.
 - ii. Accreditation Association of Ambulatory Health Care for Ambulatory Surgical Treatment Center projects and where applicable;

- iii. American Association for Accreditation of Ambulatory Surgical Facilities for ASTC projects;
 - iv. Accreditation of Rehabilitation Facilities (CARF) for Comprehensive Inpatient Rehabilitation Services and inpatient psychiatric projects;
 - v. American Society of Therapeutic Radiation and Oncology (ASTRO), the American College of Radiology (ACR), the American College of Radiation Oncology (ACRO), National Cancer Institute (NCI), or a similar accrediting authority, for Megavoltage Radiation Therapy projects;
 - vi. American College of Radiology for Positron Emission Tomography, Magnetic Resonance Imaging and Outpatient Diagnostic Center projects;
 - vii. Community Health Accreditation Program, Inc., Accreditation Commission for Health Care, or another accrediting body with deeming authority for hospice services from the Centers for Medicare and Medicaid Services (CMS) or state licensing survey, and/or other third party quality oversight organization for Hospice projects;
 - viii. Behavioral Health Care accreditation for the Joint Commission for non-residential Substitution Based Treatment Center for Opiate Addiction projects;
 - ix. American Society of Transplantation or Scientific Registry of Transplant Recipients for Organ Transplant projects.
 - x. Joint Commission or another appropriate accrediting authority recognized by CMS; or other nationally recognized accrediting organization for a Cardiac Catheterization project that is not required by law to be licensed by the Department of Health;
 - xi. Participation in the National Cardiovascular Data registry for any Cardiac Catheterization project;
 - xii. Participation in the National Burn Repository for Burn Unit projects;
 - xiii. Community Health Accreditation Program, Inc., Accreditation Commission for Health Care, and/or other accrediting body with deeming authority for home health services from CMS and participation in the Medicare Quality Initiatives, Outcome and Assessment Information Set, and Home Health Compare; or other nationally recognized accrediting organization for home health projects; and
 - xiv. Participation in the National Palliative Care Registry for Hospice projects.
- i) For Ambulatory Surgical Treatment Center projects, whether the applicant has estimated the number of physicians by specialty expected to utilize the facility, developed criteria to be used by the facility in extending surgical and anesthesia privileges to medical personnel, and documented the availability of appropriate and qualified staff that will provide ancillary support services, whether on- or off-site.
- j) For Cardiac Catheterization projects:
- a. Whether the applicant documented a plan to monitor the quality of its cardiac catheterization program, including but not limited to, program outcomes and efficiencies;
 - b. Whether the applicant has agreed to cooperate with quality enhancement efforts sponsored or endorsed by the State of Tennessee, which may be developed per Policy Recommendation 2.
 - c. Whether the applicant will staff and maintain at least one cardiologist who has performed 75 cases annual average over previous 5 years (for an adult program), and 50 cases annual average over previous 5 years (for a pediatric program).
- k) For Open Heart projects:
- a. Whether the applicant will staff with the number of cardiac surgeons who will perform the volume of cases consistent with the state health (annual average of the previous 2 years);
 - i. Whether the applicant will maintain this volume in the future.

- b. Whether the applicant will staff and maintain at least one surgeon with 5 years of experience;
 - c. Whether the applicant will participate in a data reporting, quality improvement, outcome monitoring, and peer review system which benchmarks outcomes based on national norms, with such a system providing for peer review among professionals practicing in facilities and programs other than the applicant hospital (Demonstrated active participation in the STS National Databases is expected and shall be considered evidence of meeting this standard);
- l) For Comprehensive Inpatient Rehabilitation Services projects, whether the applicant will have a board-certified physiatrist on staff (preferred);
- m) For Home Health projects, whether the applicant has documented its existing or proposed plan for quality data reporting (including data on patient re-admission to hospitals), quality improvement, and an outcome and process monitoring system (including continuum of care and transitions of care from acute care facilities);
- n) For Hospice projects, whether the applicant has documented its existing or proposed plan for quality data reporting, quality improvement, and an outcome and process monitoring system; and for any other hospice agencies operating in other states with common ownership to the applicant of 50% or higher, or higher, or with common management, and whether the applicant has provided a summary of those agencies' latest surveys/inspections and any Department of Justice investigations and/or settlements;
- o) For Megavoltage Radiation Therapy projects, whether the applicant has demonstrated that it will meet the staffing and quality assurance requirements of the American Society of Therapeutic Radiation and Oncology (ASTRO), the American College of Radiology (ACR), the American College of Radiation Oncology (ACRO), National Cancer Institute (NCI), or a similar accrediting authority.;
- p) For Neonatal Intensive Care Unit projects, whether the applicant has documented its existing or proposed plan for data reporting, quality improvement, and outcome and process monitoring system; whether the applicant has documented the intention and ability to comply with the staffing guidelines and qualifications set forth by the Tennessee Perinatal Care System Guidelines for Regionalization, Hospital Care Levels, Staffing and Facilities; and whether the applicant will participate in the Tennessee Initiative for Perinatal Quality Care (TIPQC).
- q) For Nursing Home projects, whether the applicant has documented its existing or proposed plan for data reporting, quality improvement, and outcome and process monitoring systems, including in particular details on its Quality Assurance and Performance Improvement program. As an alternative to the provision of third party accreditation information, applicants may provide information on any other state, federal, or national quality improvement initiatives. An applicant that owns or administers other nursing homes should provide detailed information on their surveys and their quality control programs at those facilities; regardless of whether they are located in Tennessee;
- r) For Inpatient Psychiatric projects:
 - a. whether the applicant has demonstrated appropriate accommodations for patients (e.g., for seclusion/restraint of patients who present management problems and children who need quiet space; proper sleeping and bathing arrangements for all patients), adequate staffing that each unit

will be staffed with at least two direct patient care staff, one of which shall be a nurse, at all times, and how the proposed staffing plan will lead to quality care of the patient population served by the project;

- b. whether the applicant has documented its existing or proposed plan for data reporting, quality improvement, and outcome and process monitoring system; and
 - c. whether an applicant that owns or administers other psychiatric facilities has provided information on satisfactory surveys and quality improvement programs at those facilities, whether they are located in Tennessee or not.
- s) For Freestanding Emergency Department projects, whether the applicant has demonstrated that it will satisfy and maintain compliance with standards in the State Health Plan;
- t) For Organ Transplant projects, whether the applicant has demonstrated that it will satisfy and maintain compliance with standards in the State Health Plan; and
- u) For Relocation and/or Replacement of Health Care Institution projects:
- a. For hospital projects, Acute Care Bed Need Services Measures are applicable; and
 - b. For all other healthcare institutions, applicable facility and/or service specific measures are applicable.
- v) For every CON issued on or after the effective date of this rule, reporting shall be made to the Health Services and Development Agency, each year on the anniversary date of implementation of the CON, on forms prescribed by the Agency. Such reporting shall include an assessment of each applicable volume and quality standard and shall include results of any surveys or disciplinary actions by state licensing agencies, payors, CMS, and any self-assessment and external peer assessment processes in which the applicant participates or participated within the year. The existence and results of any remedial action, including any plan of correction, shall also be provided.
- w) HSDA will notify the applicant and any applicable licensing agency if any volume or quality measure has not been met.
- x) Within one month of notification the applicant will submit a corrective action plan and report on the progress of the plan within one year.

(4) Contribution to the Orderly Development of Adequate and Effective Healthcare Facilities and/or Services. The contribution which the proposed project will make to the orderly development of an adequate and effective health care system may be evaluated upon the following factors:

- (a) The relationship of the proposal to the existing health care system (for example: transfer agreements, contractual agreements for health services, the applicant's proposed TennCare participation, affiliation of the project with health professional schools);
- (b) The positive or negative effects attributed to duplication or competition;
- (c) The availability and accessibility of human resources required by the proposal, including consumers and related providers;
- (d) ~~The quality of the proposed project in relation to applicable governmental or professional standards.~~

(5) Applications for Change of Site. When considering a certificate of need application which is limited to a request for a change of site for a proposed new health care institution, The Agency may consider, in addition to the foregoing factors, the following factors:

(a) Need. The applicant should show the proposed new site will serve the health care needs in the area to be served at least as well as the original site. The applicant should show that there is some significant legal, financial, or practical need to change to the proposed new site.

(b) Economic factors. The applicant should show that the proposed new site would be at least as economically beneficial to the population to be served as the original site.

(c) Quality of Health Care to be provided. The applicant should show the quality of health care to be provided will be served at least as well as the original site.

(c) Contribution to the orderly development of health care facilities and/or services. The applicant should address any potential delays that would be caused by the proposed change of site, and show that any such delays are outweighed by the benefit that will be gained from the change of site by the population to be served.